THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.6715 of 2007

Dated:20.09.2007

Between:

Kasu Sayamma Municipal High School,
Guntur, rep.by Commissioner,
Municipal Corporation of Guntur.

…Petitioner

and

Sri Yadavallivari Choultry,
Kothapeta, Guntur,
Rep.by its Manager,
and others.

…Respondents

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ORDER:

The land admeasuring 14345 square yards in T.S.Nos.545 and 542 situated at Kothapet, Guntur Town, is owned by Sri Yadavallivari Choultry, Kothapet – first respondent herein. Out of this an extent of 3300 square yards of land was encroached upon by somebody and constructed a School in the name of Kasu Sayamma School. The Government in later years took over the management and handed over to Guntur Municipality (now Guntur Municipal Corporation). That is how, the school is called 'Kasu Sayamma Municipal High School'. The Executive Officer of the first respondent gave a complaint to the Assistant Commissioner of Endowments, Guntur, under Section 83(1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (the Act, for brevity) for eviction of the petitioner. Accordingly, proceedings were initiated under Section 83 of the Act. A notice was issued on 29.04.2006 by the second respondent declaring the petitioner as encroacher. A regular enquiry was conducted before doing that. The petitioner then preferred a revision under Section 92 of the Act before the Regional Joint Commissioner, Multi Zone-I, Endowments

Department, Kakinada. The same was also dismissed on 19.10.2006. Feeling aggrieved by the same, the petitioner preferred a further revision before the Government under Section 93 of the Act. The same was dismissed by the Government of Andhra Pradesh by their Memo No.56282/Endts.IV(1)/2006-2, dated 19.02.2007. Aggrieved by the same, the petitioner filed the instant Writ Petition seeking a writ of certiorari to quash the order of the Government.

Learned Counsel for the petitioner submits that the impugned orders passed by the Deputy Commissioner and confirmed by the Government is one without jurisdiction. He submits that the petitioner has perfected title, and when once the Special Tribunal constituted under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, dismissed L.G.O.P.No.113 of 1989, filed by the first respondent, another application under Section 83 of the Act would not lie. He also points out that the first respondent filed a suit for permanent injunction against Guntur Municipality, and the same was dismissed by the trial Court as well as the first and second appellate Courts, and therefore, it operates as *resjudicata*.

Learned Assistant Government Pleader for Endowments opposing the Writ Petition submits that in the earlier suits as well as before the Special Tribunal, the School was held to be tenant and a tenant after expiry of lease is treated as encroacher for the purpose of Section 83 of the Act. Secondly, she submits that all the three authorities have considered the question of controversy in the background of facts, and came to the conclusion that the petitioner – School is an encroacher of the property belonging to the first respondent, and therefore, no interference is called for.

In a certiorari proceedings, it is needless to mention, the aggrieved person has to show not only error, but grave error apparent on the face of the record resulting in miscarriage of justice. In a given case, where the decision maker suffers from inherent lack of jurisdiction but still entertains the case and passes an order resulting in grievance, a person need not necessarily again prove miscarriage of justice. An order passed by the authority without proper jurisdiction itself is injustice. In this case, in the earlier proceedings of the civil Court and before the Special Tribunal there is finding that the petitioner is not a land grabber or trespasser, that itself would not oust the power of the Commissioner under Section 83 of the Act to evict the encroacher. The Government considered the revision petition of the petitioner in the light of the record, and came to the

conclusion that there was no subsisting lease between the petitioner and the first respondent, and therefore, the petitioner is encroacher.

The impugned order, therefore, does not warrant any interference, and the Writ Petition is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

20.09.2007
vs